

FILE



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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Seattle, Washington 98101**

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PLEASE DELIVER TO:

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FROM: **NAME:** S
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This transmission consists of _____ page(s) including this cover page.

ADDITIONAL MESSAGE _____

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

November 10, 1998

Reply To
Attn of: ORC-158

Thomas Greenland
Union Pacific Railroad Co.
Law Department
1416 Dodge Street
Omaha, Nebraska 68179

Re: Union Pacific Railroad Wallace-Mullan Branch
Rails-to-Trails Conversion

Dear Tom:

As you know, EPA Region 10 is preparing to release the Engineering Evaluation/Cost Analysis (EE/CA) for public comment. At the time the EE/CA is released for public comment, the NCP requires that EPA make the administrative record file available for public inspection. 40 C.F.R. 300.820(a)(1). The administrative record file is intended to include all documents that serve as the basis for selection of a response action. For your convenience, I have attached the NCP language describing the specific purposes and requirements of the administrative record file.

At this time, many of the documents that EPA has collected or needs to collect for the administrative record file have been marked "Confidential" by Union Pacific or MFG, reflecting settlement discussions. For purposes of the administrative record file, EPA intends to maintain the confidentiality of documents specifically associated with settlement discussions, namely Union Pacific's original Good Faith Offer (Oct. 30, 1995), Amended Good Faith Offer (April 14, 1997), Continuation of Good Faith Offer Negotiations (Oct. 24, 1997), Union Pacific Railroad's Good Faith Offer (Nov. 4, 1998), and specific responses and counteroffers from the government parties.

Beyond these specific documents (and associated errata), EPA intends to make all other documents publicly available through the administrative record file, unless we receive a written request identifying other specific documents. Any such request must be received by EPA before **November 24, 1998**.

Attached, for your information, is an initial listing of documents for the administrative record file supporting the Union Pacific removal action along the Wallace-Mullan Branch. These documents presently represent a subset of the Site File for the Bunker Hill Basin-wide RI/FS. As you will note from this attachment, the present collection is pretty thin, but will be supplemented substantially over the next few weeks. If you have any questions about the administrative record requirements for this removal action, please feel free to call me.

Sincerely,



Clifford J. Villa
Assistant Regional Counsel

Attachments

cc: Curt Fransen
Howard Funke
Barry Stein
Steve Silverman
Tom Swegle

**UNION PACIFIC RAILROAD WALLACE-MULLAN BRANCH
NON-TIME CRITICAL REMOVAL ACTION**

ADMINISTRATIVE RECORD FILE

(draft 11/5/98)

1. Diagram of Osburn siding, with handwritten notes identifying results of 1998 soil sampling
2. Union Pacific Railroad Right-of-Way Sampling and Analysis Plan (Mar. 1998)
3. Roseanne Lorenzana, March 1998 Draft Streamlined Risk Assessment for Union Pacific Railroad Right-of-Way (ROW) - COMMENTS (Apr. 2, 1998)
4. Moe Lance, Changes to Superfund Accounting Information; Coeur d'Alene - UPRR/Trails (SSID 103D) (Apr. 13, 1998)
5. MFG, Wallace-Mullan Branch Rails-to-Trails Conversion Flood Damage Repair/Protection Technical Group Update (Apr. 17, 1998)
6. MFG, Wallace-Mullan Branch Rails-to-Trails Conversion Right-of-Way Remediation Technical Group Update (Apr. 17, 1998)
7. MFG, March/April 1998 ROW Soil Sampling (May 4, 1998)
8. MFG, Technical Meeting Draft Agenda: June 1, 2, and 3, 1998 (May 15, 1998)
9. MFG, Union Pacific Railroad Wallace-Mullan Branch Rails-to-Trails Conversion - Draft EE/CA - Section 6 (May 18, 1998)
10. MFG, Draft Document Outlines for June Technical Meetings (May 28, 1998)
11. MFG, Wallace-Mullan Branch Rails-to-Trails Conversion Revised EE/CA Schedule (May 29, 1998)
12. Robin Hibbert, Comments on UPRR Risk Assessment (June 10, 1998)

40 CFR Ch. I (7-1-96 Edition)

Wilson Boulevard, Arlington, Virginia
22203-1804, (703) 235-4756.

Subpart I—Administrative Record for Selection of Response Action

SOURCE: 55 FR 8859, Mar. 8, 1990, unless otherwise noted.

§ 300.800 Establishment of an administrative record.

(a) *General requirement.* The lead agency shall establish an administrative record that contains the documents that form the basis for the selection of a response action. The lead agency shall compile and maintain the administrative record in accordance with this subpart.

(b) *Administrative records for federal facilities.* (1) If a federal agency other than EPA is the lead agency for a federal facility, the federal agency shall compile and maintain the administrative record for the selection of the response action for that facility in accordance with this subpart. EPA may furnish documents which the federal agency shall place in the administrative record file to ensure that the administrative record includes all documents that form the basis for the selection of the response action.

(2) EPA or the U.S. Coast Guard shall compile and maintain the administrative record when it is the lead agency for a federal facility.

(3) If EPA is involved in the selection of the response action at a federal facility on the NPL, the federal agency acting as the lead agency shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents EPA may request on a case-by-case basis.

(c) *Administrative record for state-lead sites.* If a state is the lead agency for a site, the state shall compile and maintain the administrative record for the selection of the response action for that site in accordance with this subpart. EPA may require the state to place additional documents in the administrative record file to ensure that the administrative record includes all

Environmental Protection Agency

§ 300.810

documents which form the basis for the selection of the response action. The state shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents EPA may request on a case-by-case basis.

(d) *Applicability.* This subpart applies to all response actions taken under section 104 of CERCLA or sought, secured, or ordered administratively or judicially under section 106 of CERCLA, as follows:

(1) Remedial actions where the remedial investigation commenced after the promulgation of these regulations; and

(2) Removal actions where the action memorandum is signed after the promulgation of these regulations.

(e) For those response actions not included in paragraph (d) of this section, the lead agency shall comply with this subpart to the extent practicable.

§ 300.805 Location of the administrative record file.

(a) The lead agency shall establish a docket at an office of the lead agency or other central location at which documents included in the administrative record file shall be located and a copy of the documents included in the administrative record file shall also be made available for public inspection at or near the site at issue, except as provided below:

(1) Sampling and testing data, quality control and quality assurance documentation, and chain of custody forms, need not be located at or near the site at issue or at the central location, provided that the index to the administrative record file indicates the location and availability of this information.

(2) Guidance documents not generated specifically for the site at issue need not be located at or near the site at issue, provided that they are maintained at the central location and the index to the administrative record file indicates the location and availability of these guidance documents.

(3) Publicly available technical literature not generated for the site at issue, such as engineering textbooks,

articles from technical journals, and toxicological profiles, need not be located at or near the site at issue or at the central location, provided that the literature is listed in the index to the administrative record file or the literature is cited in a document in the record.

(4) Documents included in the confidential portion of the administrative record file shall be located only in the central location.

(5) The administrative record for a removal action where the release or threat of release requires that on-site removal activities be initiated within hours of the lead agency's determination that a removal is appropriate and on-site removal activities cease within 30 days of initiation, need be available for public inspection only at the central location.

(b) Where documents are placed in the central location but not in the file located at or near the site, such documents shall be added to the file located at or near the site upon request, except for documents included in paragraph (a)(4) of this section.

(c) The lead agency may make the administrative record file available to the public in microform.

§ 300.810 Contents of the administrative record file.

(a) *Contents.* The administrative record file for selection of a response action typically, but not in all cases, will contain the following types of documents:

(1) Documents containing factual information, data and analysis of the factual information, and data that may form a basis for the selection of a response action. Such documents may include verified sampling data, quality control and quality assurance documentation, chain of custody forms, site inspection reports, preliminary assessment and site evaluation reports, ATSDR health assessments, documents supporting the lead agency's determination of imminent and substantial endangerment, public health evaluations, and technical and engineering evaluations. In addition, for remedial actions, such documents may include approved workplans for the remedial investigation/feasibility study, state

documentation of applicable or relevant and appropriate requirements, and the R/IFS:

(2) Guidance documents, technical literature, and site-specific policy memoranda that may form a basis for the selection of the response action. Such documents may include guidance on conducting remedial investigations and feasibility studies, guidance on determining applicable and relevant and appropriate requirements, guidance on risk/exposure assessments, engineering handbooks, articles from technical journals, memoranda on the application of a specific regulation to a site, and memoranda on off-site disposal capacity.

(3) Documents received, published, or made available to the public under § 300.815 for removal actions. Such documents may include notices of availability of the administrative record file, community relations plan, proposed plan for remedial action, notices of public comment periods, public comments and information received by the lead agency, and responses to significant comments;

(4) Decision documents. Such documents may include action memoranda and records of decision;

(5) Enforcement orders. Such documents may include administrative orders and consent decrees; and

(6) An index of the documents included in the administrative record file. If documents are customarily grouped together, as with sampling data chain of custody documents, they may be listed as a group in the index to the administrative record file.

(b) Documents not included in the administrative record file. The lead agency is not required to include documents in the administrative record file which do not form a basis for the selection of the response action. Such documents include but are not limited to draft documents, internal memoranda, and day-to-day notes of staff unless such documents contain information that forms the basis of selection of the response action and the information is not included in any other document in the administrative record file.

(c) Privileged documents. Privileged documents shall not be included in the

record file except as provided in paragraph (d) of this section or where such privilege is waived. Privileged documents include but are not limited to documents subject to the attorney-client, attorney work product, deliberative process, or other applicable privileges.

(d) Confidential file. If information which forms the basis for the selection of a response action is included only in a document containing confidential or privileged information and is not otherwise available to the public, the information, to the extent feasible, shall be summarized in such a way as to make it disclosable and the summary shall be placed in the publicly available portion of the administrative record file. The confidential or privileged document itself shall be placed in the confidential portion of the administrative record file. If information, such as confidential business information, cannot be summarized in a disclosable manner, the information shall be placed only in the confidential portion of the administrative record file. All documents contained in the confidential portion of the administrative record file shall be listed in the Index to the file.

§ 300.815 Administrative record file for a remedial action.

(a) The administrative record file for the selection of a remedial action shall be made available for public inspection at the commencement of the remedial investigation phase. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of the availability of the administrative record file.

(b) The lead agency shall provide a public comment period as specified in § 300.430(f)(3) so that interested persons may submit comments on the selection of the remedial action for inclusion in the administrative record file. The lead agency is encouraged to consider and respond as appropriate to significant comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

Environmental Protection Agency

(c) The lead agency shall comply with the public participation procedures required in § 300.430(f)(3) and shall document such compliance in the administrative record.

(d) Documents generated or received after the record of decision is signed shall be added to the administrative record file only as provided in § 300.825.

§ 300.820 Administrative record file for a removal action.

(a) If, based on the site evaluation, the lead agency determines that a removal action is appropriate and that a planning period of at least six months exists before on-site removal activities may be initiated:

(1) The administrative record file shall be made available for public inspection when the engineering evaluation/cost analysis (EE/CA) is made available for public comment. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of the availability of the administrative record file.

(2) The lead agency shall provide a public comment period as specified in § 300.416 so that interested persons may submit comments on the selection of the removal action for inclusion in the administrative record file. The lead agency is encouraged to consider and respond, as appropriate, to significant comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(3) The lead agency shall comply with the public participation procedures of § 300.416(m) and shall document compliance with § 300.416(m)(3)(1) through (11) in the administrative record file.

(4) Documents generated or received after the decision document is signed shall be added to the administrative record file only as provided in § 300.825.

(b) For all removal actions not included in paragraph (a) of this section: (1) Documents included in the administrative record file shall be made available for public inspection no later than 60 days after initiation of on-site removal activity. At such time, the lead agency shall publish in a major local newspaper of general circulation

a notice of availability of the administrative record file.

(2) The lead agency shall, as appropriate, provide a public comment period of not less than 30 days beginning at the time the administrative record file is made available to the public. The lead agency is encouraged to consider and respond, as appropriate, to significant comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(3) Documents generated or received after the decision document is signed shall be added to the administrative record file only as provided in § 300.825.

§ 300.825 Record requirements after the decision document is signed.

(a) The lead agency may add documents to the administrative record file after the decision document selecting the response action has been signed if:

(1) The documents concern a portion of a response action decision that the decision document does not address or reserves to be decided at a later date; or

(2) An explanation of significant differences required by § 300.435(e), or an amended decision document is issued, in which case, the explanation of significant differences or amended decision document and all documents that form the basis for the decision to modify the response action shall be added to the administrative record file.

(b) The lead agency may hold additional public comment periods or extend the time for the submission of public comment after a decision document has been signed on any issues concerning selection of the response action. Such comment shall be limited to the issues for which the lead agency has requested additional comment. All additional comments submitted during such comment periods that are responsive to the request, and any response to these comments, along with documents supporting the request and any final decision with respect to the issue, shall be placed in the administrative record file.